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EXAMINER
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FADOK, MARK A

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

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1 The opinion in support of the decision being entered today is *not* binding precedent  
2 of the Board.

3  
4 UNITED STATES PATENT AND TRADEMARK OFFICE  
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6  
7 BEFORE THE BOARD OF PATENT APPEALS  
8 AND INTERFERENCES  
9

10  
11 *Ex parte* STEVEN C. ROBERTSON  
12

13  
14 Appeal 2007-1813  
15 Application 09/324,601  
16 Technology Center 3600  
17

18  
19 Decided: August 20, 2007  
20

21  
22 Before MURRIEL E. CRAWFORD, ANTON W. FETTING, and  
23 DAVID B. WALKER, *Administrative Patent Judges*.  
24  
25 FETTING, *Administrative Patent Judge*.

26  
27 DECISION ON APPEAL  
28

29  
30 STATEMENT OF CASE

31 Steven C. Robertson (Appellant) seeks review under 35 U.S.C. § 134 of a Non-  
32 Final rejection of claims 23-37, the only claims pending in the application on  
33 appeal.

34 We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6.

35  
36 We AFFIRM.

1

2 The Appellant invented an online gift certificate and contribution broker that  
3allows consumers to purchase gift certificates that may be redeemed at any  
4participating electronic merchant (Specification 1:Background – Field of  
5Invention).

6 An understanding of the invention can be derived from a reading of exemplary  
7claim 23, which is reproduced below [bracketed matter and some paragraphing  
8added].

9 23. A system for providing an electronic gift certificate service for  
10 users over a distributed network, comprising:

11 [1] a plurality of merchant sites connected to the distributed network,  
12 each merchant site running at least one application to provide  
13 an online service to users over the distributed network;

14 [2] a plurality of user computers connected to the distributed network,  
15 each user computer running at least one application to access  
16 the online service at a merchant site;

17 [3] a gift certificate authority site connected to the plurality of  
18 merchant sites, the gift certificate site including

19 [a] a user database and

20 [b] a merchant database,

21 each database containing authentication information as to  
22 respective users and merchants,

23 [c] and a gift certificate database

24 which stores

25 gift certificate data and

26 transaction data

27 related to particular gift certificates,

1 [d] the users accessing the merchant sites from the user  
2 computers over the distributed network; and

3 [e] an authentication protocol for allowing the gift certificate  
4 site to authenticate users and merchants;

5 [4] whereby

6 [a] a user purchases a gift certificate having a unique gift  
7 certificate identification code on the gift certificate authority  
8 site for use at a merchant site, and

9 [b] a merchant site processes the gift certificate through the gift  
10 certificate database on the gift certificate authority site.

11 This appeal arises from the Examiner's Non-Final Rejection, mailed May 9,  
122006. The Appellant filed an Appeal Brief in support of the appeal on August 28,  
132006, and an Examiner's Answer to the Appeal Brief was mailed on October 5,  
142006. A Reply Brief was filed on December 11, 2006.

15 PRIOR ART

16 The Examiner relies upon the following prior art:

17Gillin US 7,010,512 B1 Mar. 7, 2006

18 REJECTION<sup>1</sup>

19 Claims 23-37 stand rejected under 35 U.S.C. § 102(e) as anticipated by Gillin.

---

6<sup>1</sup> An August 13, 2004 Final Rejection contained three rejections under 35 U.S.C.  
7§ 103. The Brief contends these rejections (Appeal Br. 6-16). The Examiner  
8withdrew these rejections and introduced a single new ground of rejection under  
935 U.S.C. § 102(e) (Non-Final Rejection 2-4; Answer 2-3). Thus, the rejections  
10under 35 U.S.C. § 103 are not before us, and the Appellant's contentions are  
11therefore moot.

ISSUES

2 Thus, the issue pertinent to this appeal is whether the Appellant has sustained  
3its burden of showing that the Examiner erred in rejecting claims 23-37 under  
435 U.S.C. § 102(e) as anticipated by Gillin.

5 The pertinent issue turns on whether Gillin describes a gift certificate site  
6containing merchant, user, and gift certificate databases with authentication  
7information for merchants and users.

FACTS PERTINENT TO THE ISSUES

9  
10 The following enumerated Findings of Fact (FF) are believed to be supported  
11by a preponderance of the evidence.

12 *Claim Construction*

- 13 1. A public network is a network whose access is not controlled by or  
14 limited to a particular business entity or group of business entities  
15 (Specification 9:Last ¶).
- 16 2. The word “distributed” in the context of a network implies that  
17 processing capabilities and services are spread out among different  
18 nodes (Specification 9:Last ¶).
- 19 3. The Specification contains no other lexicographic definitions of terms.

Gillin

4. Gillin is directed towards debit/credit/charge accounts, but without issuing physical cards and providing them to the gift recipient, which provides significant advantages to transactions normally involving gift certificates (Gillin, col. 4, ll. 55-59).
5. Gillin's "transfer instrument" is used to refer generically to the result of Gillin's inventive transfer methods, which will typically be used in the gift giving context. The transfer instrument is intangible in that it is not physically produced (Gillin, col. 8, ll. 39-43).
6. Gillin describes use of its transfer instrument for the purchase of goods or services from any merchant who is capable of processing economic transactions involving one of the plurality national card accounts for which a physical card has issued, but without presentment of the physical card (Gillin, col. 5, ll. 13-19).
7. Gillin uses the existing authorization infrastructure of Visa, Mastercard, and American Express (Gillin, col. 7, ll. 30-33).
8. Gillin shows communication among the user, merchant and the transfer instrument account (Gillin, Fig. 3).
9. In Gillin, the transfer instrument issuer's Issuing Bank enters the instrument recipient's account information into its database (Gillin, col. 7, ll. 62-67).
10. In Gillin, merchants who wish to accept payments using the cards register with a bank affiliated with the card association. Banks which register merchants are often referred to as acquiring banks or acquirers.

1 Of course, in many instances, the same bank may be both an issuing  
2 bank and an acquiring bank. American Express and Discover operate in  
3 the roles of both the issuing and acquiring banks (Gillin, col. 9, ll. 5-14).

4 11.In Gillin, authorization typically involves an authorization center which  
5 is operated either by or on behalf of the acquiring bank. In general the  
6 merchant contacts the authorization center which may in some instances  
7 contact the card issuing bank to verify availability of funds or, if the  
8 transaction amount is small enough, merely verify that the card has not  
9 been blacklisted (Gillin, col. 9, ll. 26-32).

10 12.In Gillin, according to one embodiment, the offerer obtains payment  
11 card accounts from an issuing bank. Those accounts, and their  
12 associated information, are recorded in the database. The database  
13 contains fields for the buyer, the recipient, the denomination, messages  
14 to buyers or recipients, a multi-character unique identifier, and a product  
15 family table (Gillin, col. 14, l. 47 – col. 15, l. 32).

16 13.In Gillin, payment methods may follow the more prevalent internet  
17 related payment schemes, such as CyberCash. CyberCash itself requires  
18 merchant registration with CyberCash (Gillin, col. 10, ll. 19-49).

19 14.Gillin allows restrictions on the time frame and the amount of the  
20 instrument (Gillin, col. 23, ll. 44-47).

21 15.Gillin describes the purchaser may have been allowed to request  
22 notification of when the transfer instrument was used and an identifier  
23 for the merchant with whom it was used (Gillin, col. 21, ll.18-23).

1 16. Gillis states that an additional feature of the transfer instrument is the  
2 ability to make the purchaser anonymous to the recipient (Gillin. col. 20,  
3 ll. 24-31).

17. Gillis states that the purchaser provides the recipient's e-mail address,  
telephone number, and/or mailing address (Gillin, col. 17, ll. 40-43).

## 7 PRINCIPLES OF LAW

### 8Claim Construction

9 During examination of a patent application, pending claims are given  
10 their broadest reasonable construction consistent with the specification. *In*  
11 *re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969);  
12 *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364, 70 USPQ2d 1827,  
13 1834 (Fed. Cir. 2004).

14 Although a patent applicant is entitled to be his or her own lexicographer of  
15 patent claim terms, in *ex parte* prosecution it must be within limits. *In re Corr*,  
16 347 F.2d 578, 580, 146 USPQ 69, 70 (CCPA 1965). The applicant must do so by  
17 placing such definitions in the Specification with sufficient clarity to provide a  
18 person of ordinary skill in the art with clear and precise notice of the meaning that  
19 is to be construed. *See also In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ 2d 1671,  
20 1674 (Fed. Cir. 1994) (although an inventor is free to define the specific terms  
21 used to describe the invention, this must be done with reasonable clarity,  
22 deliberateness, and precision; where an inventor chooses to give terms uncommon  
23 meanings, the inventor must set out any uncommon definition in some manner  
24 within the patent disclosure so as to give one of ordinary skill in the art notice of  
25 the change).



1*Anticipation*

2 "A claim is anticipated only if each and every element as set forth in the claim  
3is found, either expressly or inherently described, in a single prior art reference."  
4*Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d  
51051, 1053 (Fed. Cir. 1987). "When a claim covers several structures or  
6compositions, either generically or as alternatives, the claim is deemed anticipated  
7if any of the structures or compositions within the scope of the claim is known in  
8the prior art." *Brown v. 3M*, 265 F.3d 1349, 1351, 60 USPQ2d 1375, 1376 (Fed.  
9Cir. 2001). "The identical invention must be shown in as complete detail as is  
10contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236,  
119 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as  
12required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of  
13terminology is not required. *In re Bond*, 910 F.2d 831, 832, 15 USPQ2d 1566,  
141567 (Fed. Cir. 1990).

15 ANALYSIS

16 *Claims 23-37 rejected under 35 U.S.C. § 102(e) as anticipated by Gillin.*

17 *Independent Claim 23*

18 The Examiner found that Gillin describes all of the elements of claim 23  
19(Answer 4:¶ beginning "In regards to claim 23").

20 The Appellant presents a long list of contentions regarding claim 23 that we  
21next analyze. But since it is apparent that the most pertinent issue is whether Gillin  
22describes a gift certificate site containing merchant, user, and gift certificate  
23databases with authentication information for merchants and users, we address this  
24first.

1 Gillin relies on the banks who issue credit cards to execute its operations.  
2Gillin expressly states that in many instances, the same bank serves both merchant  
3and user (FF ). Thus, the databases that contain the records for those merchants  
4and users would be on the same site. Gillin also states that the transfer  
5instruments, which are the equivalent of gift certificates, are represented as  
6accounts on the issuer bank's database (FF ). Thus, all three databases in claim 23  
7element [3] are on the same site. Since this site contains the gift certificate  
8accounts, it may be characterized as a gift certificate authority site. Further, since  
9the databases identify the merchants and users, such identity information is among  
10the information that would be used for authentication.

11 The Appellant contends that Gillin teaches away from the elements of claim 23  
12(Appeal Br. 16:Last ¶). The Appellant contends that a programmatic infrastructure  
13establishing direct connections to merchants is disclosed and claimed, whereas  
14Gillin requires no relationship with merchants (Appeal Br. 17:First ¶).

15 We find no claim limitation regarding a direct connection to merchants in  
16claim 23. In Gillin, a relationship is required with merchants who wish to accept  
17payment using the cards (FF ). Thus, we find this argument by the Appellant  
18unpersuasive.

19 The Appellant next contends that Gillin offers nothing more than the sale of a  
20temporary credit card (Appeal Br. 17:First full ¶).

21 We find nothing in claim 23 that precludes the sale of temporary cards. A gift  
22certificate, which Gillin replaces, is by its nature temporary. To the extent the  
23Appellant is arguing that Gillin does not sell gift certificates, Gillin expressly  
24describes its instrument as the equivalent of a gift certificate (FF ). Therefore, we  
25find the appellant's arguments to be unpersuasive.

1 The Appellant next contends that Gillin teaches away from merchant databases  
2because they would be unnecessary if transactions were handled by credit card  
3suppliers (Appeal Br. 17:Second full ¶).

4 Gillin describes registering merchants who wish to accept payments using the  
5cards with the acquiring bank (FF ). Such registration records the merchant in the  
6bank's records, which therefore form a database of merchants. Therefore, we find  
7the appellant's arguments to be unpersuasive. To the extent the Appellant is  
8arguing that a credit card supplier does not provide a Gift Certificate Authority  
9Site, which claim 23 recites as the location of the database, claim 23 does not  
10preclude a credit card supplier from providing a Gift Certificate Authority Site.  
11Therefore, we find the appellant's arguments to be unpersuasive.

12 The Appellant next contends that Gillin does not describe merchant  
13authentication (Appeal Br. 17:Second full ¶).

14 We initially find that claim 23 does not recite a step of authenticating, but the  
15presence of an authentication protocol that allows authentication. Gillin expressly  
16states that users are authorized (FF 7). Such an authorization performed by a  
17merchant, by virtue of its use of the network used by the major credit cards (FF ),  
18inherently provides the protocol used by these credit card issuers and authenticates  
19the merchant as one with the authority to perform such an authorization. Further,  
20since Gillin's flow also allows use of payment forms such as those of CyberCash,  
21which requires merchant registration, at least those merchants using CyberCash are  
22authenticated. Therefore, we find the appellant's arguments to be unpersuasive.

23 The Appellant next contends that Gillin does not describe a software module  
24on a merchant site expressly for the purpose of communicating directly with the  
25Gift Certificate Authority Site and server application (Appeal Br. 18:First ¶).

1 We find that claim 23 contains no limitation of a software module on a  
2merchant site expressly for the purpose of communicating directly with the Gift  
3Certificate Authority Site and server application. To the extent the Appellant is  
4arguing that Gillin fails to show communication between the user, merchant, and  
5Gift Certificate Authority Site, Gillin in fact shows communication among those  
6entities (FF ).

7 The Appellant next contends that Gillin does not suggest the claimed robust  
8range of utility and control (Appeal Br. 18:First ¶).

9 We find no recitation of a robust range of utility and control in claim 23.  
10Therefore, we find the appellant's arguments to be unpersuasive.

11 The Appellant further contends that the claimed gift certificate system doesn't  
12distribute credit card accounts and doesn't use an established credit card issuing  
13banking system (Reply Br. 2:Second full ¶).

14 Claim 23 recites no limitation precluding credit card accounts as the basis for  
15the gift certificates, nor use of an established credit card issuing banking system.  
16Therefore, we find the appellant's arguments to be unpersuasive.

17 The Appellant next contends that Gillin fails to show a gift certificate, just  
18credit cards, and fails to show a distributed network, or a plurality of merchants,  
19who all have sites connected to the distributed network. The Appellant argues that  
20Gillin's requirement that merchants be capable of seeking authorization restricts  
21some merchants from the network (Reply Br. 2:Last ¶).

22 Gillin expressly uses its transfer instrument as the equivalent of a gift  
23certificate (FF ). Further, Gillin allows any merchant who is capable of processing  
24economic transactions involving one of the plurality national card accounts access.

1Such access is through a distributed network. To the extent the Appellant is  
2arguing that claim 23 requires that all merchants who are connected to the network  
3have access to the gift certificate, we find no such limitation in claim 23.  
4Therefore, we find the appellant's arguments to be unpersuasive.

5 The Appellant next contends that Gillin fails to show a Gift Certificate  
6Authority Site (Reply Br. 3:First full ¶). The Appellant further contends, that if the  
7Examiner equates Gillin's transfer instrument issuer with the Gift Certificate  
8Authority Site, that the transfer instrument issuer has no relationship with  
9merchants (Reply Br. 4:First ¶).

10 Gillin shows show a Gift Certificate Authority Site (Gillin's transfer  
11instrument account site) and a relationship with merchants (FF ). Therefore, we  
12find the appellant's arguments to be unpersuasive.

13 The Appellant next repeats the above contentions that Gillin does not show  
14merchants interacting directly with a Gift Certificate Authority Site (Reply Br.  
154:Third ¶), and that Gillin has no merchant database (Reply Br. 5:First ¶). We find  
16these contentions similarly unpersuasive in their repetition.

17 The Appellant next contends that Gillin does not record gift certificate  
18transaction data (Reply Br. 5:First and second full ¶).

19 Gillin shows the use of the credit card infrastructure which records transaction  
20data. Since Gillin's transfer instrument is implemented with such an account, the  
21transaction data for the account would be gift certificate transaction data (FF ).  
22Therefore, we find the appellant's arguments to be unpersuasive.

23

24 *Dependent Claims 24-28*

1 The Examiner found that Gillin teaches: (claim 24) placing restrictions on the  
2use of the gift certificate; (claim 25) tracking use of the gift certificate by the user;  
3(claim 26) search mechanism operatively associated with the gift certificate  
4database that provides access to the user to those sales transactions associated with  
5a particular user gift certificate; (claim 27) user anonymity that is effected by  
6preventing merchant site access to any user related data, other than the gift  
7certificate identification code; and (claim 28) within the gift certificate database,  
8and in conjunction with merchant site processing of the gift certificate through the  
9gift certificate database, splitting of the gift certificate across multiple purchases at  
10a plurality of merchant sites (Answer 4:Last ¶-5:Fourth ¶).

11 The Appellant contends that the restrictions on the use of the gift certificate of  
12claims 24 and 28, the ability to timely track, report and search transactions of  
13claims 25 and 26, the level of anonymity provided the purchaser within Claim 27,  
14all further defined in the specification, are not possible with a system and method  
15that utilizes the existing credit/bank/charge card infrastructure, which is pointedly  
16not configured to perform such functions. In fact, the current credit card system is  
17configured to perform oppositely (Appeal Br. 18:Second ¶).

18 The Appellant further argues that in Claim 24, the only restrictions that may be  
19placed on the use of the temporary credit cards of Gillin are those commensurate to  
20an ordinary credit card purchase and that this is not the range of restrictions  
21claimed and further described in Applicant's specification. The Appellant argues  
22that the "transfer instrument" of Gillin could never restrict where purchases might  
23be made as Applicant's system and method does, because it can be used wherever a  
24credit card can be used (Appeal Br. 18:Last ¶ - Top of 19).

1 Gillin allows restrictions on the time frame and the amount of the instrument  
2(FF ). Claim 24 does not recite any particular restriction and claim 28 recites no  
3restrictions. Ability to track, report and search transactions is an option in Gillin  
4(FF ). Gillin has the ability to make the purchaser anonymous to the recipient (FF  
5). Therefore, we find the appellant's arguments to be unpersuasive.

6 *Independent Claim 29 and dependent claim 33*

7 The Examiner found that Gillin describes the elements of independent claim 29  
8(Answer 5:Fifth ¶).

9 The Appellant, arguing claims 29 and 33 together, contends that Gillin assigns  
10the purchaser one of their stockpile of credit card numbers, thereby again teaching  
11away from creating a gift certificate with unique identifier, under the control of the  
12Gift Certificate Authority Site of Applicant's system and method (Appeal Br.  
1319:First full ¶).

14 Gillin's account number is a unique identifier under control of the issuer (FF ).  
15Therefore, we find the appellant's arguments to be unpersuasive.

16 *Dependent claims 30-32*

17 The Examiner found that Gillin teaches (claim 30) ahead of the step of gift  
18certificate site validation, the user associates a fixed shipping address with the gift  
19certificate; (claim 31) ahead of the step of gift certificate site validation, the user  
20associates a restriction on certificate use the restriction selected from the group of  
21restrictions consisting of restriction on certificate use by category of product or  
22service, restriction on certificate use by age range of product or service, restriction  
23on certificate use by dollar limitations on a per order or per item basis, restriction  
24on certificate use by date of use range, and restriction on certificate use to use at

1selected merchant sites; and (claim 32) the restriction on certificate use is a  
2restriction on certificate use by category of product or service (Appeal Br.  
319:Second full ¶).

4 The Appellant, arguing claims 30-32 together, contends that Gillin teaches  
5away, because restriction of the use of a credit/debit/charge card cannot be made.  
6Without the claimed control over the gift certificate, the shipping address for  
7purchases made with the gift certificate cannot be predetermined as required by  
8Claim 30 and the restrictions described in Claims 31 and 32 cannot be. The  
9Appellant points to several examples of restrictions in the Specification that are not  
10found in Gillin (Reply Br. 6:Last 2 ¶'s to top of 7).

11 Gillin at least shows restrictions on the date of use range (FF ), which is among  
12the limitations, only one of which is needed, in claim 31. Gillin also describes  
13getting claim 30's shipping address (FF ). Therefore, we find the appellant's  
14arguments to be unpersuasive.

15 *Independent Claim 34*

16 The Examiner found that that Gillin describes the elements of independent  
17claim 34 (Answer 6:Third ¶).

18 The Appellant contends that Gillin does not teach an interaction between the  
19merchants and a gift authority site; in fact it teaches away by teaching the  
20necessary step of running all the transactions through "Acquiring Banks" (Appeal  
21Br. 19:Third full ¶).

22 The Appellant argued this in claim 23 and we find it unpersuasive for the same  
23reasons.

24 *Independent Claim 35 and dependent claims 36 and 37*



1 The Examiner found that that Gillin describes the elements of independent  
2claim 35 (Answer 6:Last ¶).

3 The Appellant contends that Gillin fails to present any teaching or suggestion  
4whatever as to contribution management or brokerage, and the Examiner has made  
5no reference at all to these claims as to alleged corresponding elements in Gillen.  
6The Appellant admits that, while a Gillen-style card itself could be donated to a  
7charity, the Appellant contends that its usefulness to the charity would be severely  
8limited to whether the card had a very large value or not; otherwise, the charity  
9would be constrained to use the card limits of dozens or hundreds of cards to effect  
10any significant purchases for its enterprise. In contrast, the claimed system allows  
11for direct deposit to a beneficiaries bank account, so that all contributions effected  
12through the claimed system are aggregate and fungible for any particular charity  
13(Appeal Br. 20:First ¶).

14 As the Examiner found, claim 35 is essentially the same as claim 23 with the  
15word “beneficiary” replacing “merchant” and the word contribution” replacing the  
16phrase “gift certificate” (Answer 6:Last ¶). The Examiner argues that this  
17distinction is non-functional, which we find as well. Thus, the Appellant is merely  
18claiming providing the gift certificate of claim 23 to a beneficiary. Since both  
19claims are system claims, the structure is identical and therefore the finding that  
20Gillin anticipates claim 23 necessarily means that it also anticipates claim 35.

21

22 The Appellant has not sustained its burden of showing that the Examiner erred  
23in rejecting claims 23-37 under 35 U.S.C. § 102(e) as anticipated by Gillin.  
24Therefore, we find the appellant's arguments to be unpersuasive.

REMARKS

1  
2 The Appellant contends that the Examiner has made no attempt to address  
3arguments presented by Applicant in his original brief regarding the distinction  
4between the appealed claims and a system based upon existing infrastructures for  
5temporary credit cards, even though the previously cited articles, Webcertificate 1  
6and 2 were based upon just such a system and such arguments were presented by  
7Applicant in the original brief (Appeal Br. 20:Second ¶).

8 As we noted above, the Examiner withdrew the rejections under 35 U.S.C.  
9§ 103, so they are not before us. Thus, any of Appellant's contentions regarding  
10such withdrawn rejections are therefore moot. Thus, we find no reversible error in  
11the Examiner's failure to address Appellant's contentions regarding the withdrawn  
12rejections.

CONCLUSIONS OF LAW

13  
14 The Appellant has not sustained its burden of showing that the Examiner erred  
15in rejecting claims 23-37 under 35 U.S.C. § 103(a) as unpatentable over the prior  
16art.

17 On this record, the Appellant is not entitled to a patent containing claims  
1823-37.

1 DECISION

2 To summarize, our decision is as follows:

- 3 • The rejection of claims 23-37 under 35 U.S.C. § 102(e) as anticipated by  
4 Gillin is sustained.

5 No time period for taking any subsequent action in connection with this appeal  
6 may be extended under 37 CFR § 1.136(a)(1)(iv).

7  
8 AFFIRMED

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11vsh

12  
13  
14  
15  
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